

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1203 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMLAL SHIVLAL GURKHA(TIWARI)

Versus

STATE OF GUARAT

Appearance:

MR KB PUJARA for Petitioner
Mr.S.P. Hasurkar, Additional Govt. Pleader for the
respondents.
Mr.Digant P. Joshi, Assistant Govt. Pleader

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 20/04/2000

ORAL JUDGEMENT :

The matter is filed in February 1992. The Court issued notice on 12.3.1992 returnable on 30.3.1992. As no reply came to be filed, this Court issued rule on 7.12.1993 making returnable in the first week of February 1994. The order was required to be passed looking to the nature of the matter and looking to the controversy

involved in the matter. Last time, when the matter was called out for hearing, learned advocate for the petitioner, Mr.Pujara was directed to supply a set of the present petition to Mr.Digant P. Joshi, the learned Assistant Govt. Pleader to enable him to assist the Court in adjudicating the controversy involved in the matter. Mr.Pujara for the petitioner mentions that the petitioner, who was aged 75 years at the time of filing of the petition is now aged 83. The present petition is filed for the relief to the effect that the impugned order dated 22.7.1974, Annexure Z- 2 to the petition be quashed and set aside, whereby the petitioner was conveyed that the military service rendered by Shri Ramlal Shivlal Gurkha, the petitioner herein cannot be accepted towards civil pension as the conditions stipulated in Rules 246A and 247 of the Bombay Civil Service Rules ("BCSR") are not applicable to Shri Gurkha. It is further stated in the said letter that, "In view of this the refunded gratuity is to be returned to the pensioner. As regards prescribing time limit of option, it is not considered necessary to issue any instructions in the matter." This letter is addressed by the Under Secretary to the Govt. of Gujarat, Home Deptt. to the Accountant General, Gujarat.

2. The facts of the present case are that the petitioner joined services of the erstwhile Police Deptt. in the year 1.11.1940. Thereafter, as it is mentioned in letter written by the petitioner on 20.6.1968, Annexure 'E' to the petition to the Secretary, Govt. of Gujarat, Home Deptt. that,

"I joined erstwhile Baroda State Police Service on 1.11.40 and was transferred under the then Baroda Government Order No.6/3, dated 19.4.41 (the original order can be had on a reference to the State Record Officer, Kothi Buildings, Baroda). It was directed that the services rendered during the war period, the State servants is to be considered as service to have been actually rendered in the State for all purposes."

3. It is submitted by the learned advocate for the petitioner that the petitioner has retired from service on 22.12.1965. His pension and gratuity came to be fixed on a lower side than it ought to have been fixed on account of the period for which the petitioner was in armed service from 21.4.1941 to 9.2.1947 was not taken into consideration. However, the petitioner made several communications to the authorities and finally the

petitioner was told by letter dated 10.3.1970 written by the office of the Supdt. of Police, Vadodara, Annexure 'H', asking the petitioner,

"With reference to your letter dt.18.12.69, I write to inform you that as intimated by the AG, Gujarat, Ahmedabad in his letter dt.25.2.70, the non ISF service will count towards pension only when the pension/ DCRG received for the non ISF service is refunded."

It is also mentioned in the said letter that, "You should therefore arrange to refund the amount and send a copy of Challan to this office for further necessary action."

As it is not unknown for Govt. actions, the petitioner was not told as to under what particular head the amount is to be deposited. It was only by a letter dated 10.4.1970, Annexure 'J', that the petitioner was told by the Accounts Officer that,

"With reference to your letter dated 19.3.70 on the subject cited above, I am to request you to credit the amounts of DCRG received to "non ISF service" to the Budget Head XLVIII Recovery of Pension Contribution" under intimation to this office."

The petitioner then deposited the said amount on 14.4.1970, as is stated in the petition. It is interesting to note that the amount was Rs.64.50, and an intimation was sent to the Accountant General by letter dt.24.4.1970. The petitioner was hopeful that now he will be getting his pension and gratuity duly fixed and he will start getting pension which is the only support for a retired employee. However, his agony did not come to an end, but prolonged further as he received a letter, by which what he got was not the actual pension, but only letter of assurance, the copy is at Annexure 'N' dated 23.8.1971. The petitioner received a letter dated 23.11.1971 written by the IGP intimating the petitioner that pursuant to the applications of the petitioner dated 23.7.1971 and 4.9.1971, the Military service of the petitioner is considered pensionable and the pension case of the petitioner is under process of revision. The petitioner also received a similar intimation dated 19.1.1972, from the office of the DSP, Annexure 'Q'. The petitioner lastly received a letter on 17.1.1973 again from the office of the IG of Police, Gujarat State stating that,

"With reference to your application which was given to the IGP personally at Baroda on 29.12.1972, I write to inform you that your pension case has been revised by the AG, Ahmedabad and the orders are being issued shortly."

4. Learned advocate for the petitioner submits that thereafter, the Under Secretary to Govt. of Gujarat, Home Deptt. wrote a letter to the AG on 29.1.1974, and in no uncertain terms it was told to the AG that,

"Reference letter No.Pen/RSG/ 73/ 15810 dt.8.6.1973 from the Dist. Supdt. of Police, Baroda Rural Dist, Baroda, on the subject mentioned above.

2. Please issue revised pension payment order in favour of Shri Ramlal Shivlal Gurkha as early as possible under intimation to this deptt."

5. It is shocking to know about the manner in which the Govt. machinery is functioning and particularly the case of the petitioner wherein he was left high and dry for all these years without actually getting the revised pension. In spite of the aforesaid letter dated 29.1.1974, the petitioner received a copy of letter addressed to the Under Secretary to the Govt. of Gujarat from the office of the AG (Annexure 'G') whereby the entire earlier process of deciding pension case of the petitioner is nullified, the letter (though the date is mentioned, but from the letter it is possible to make out that it is of 22.4.1974), reads as under:

"I am to invite a reference to the correspondence resting with Govt. in Home Deptt. letter No.PEN 1271/ 3842 B dt.26/3/74 on the above cited subject and to state as follows.

The counting of war/ military service under BCSR.245 A/247 towards civil pension is subject to the option exercised by the Govt. servant and the refund of the bonus or gratuity received for military service. Rule 247(3) of BCSR stipulates that the military bonus or gratuity is to be refunded in not more than 36 monthly instalments. This obviously implies that the Govt. servant should opt for either retaining the military bonus or gratuity or refund the same and counting of war/ military service towards civil pension as

soon as he enter civil service or at any date before his retirement.

In the present case the govt. servant retired on 22.12.1965 and he has refunded the gratuity amounting to Rs.64.50 on 14.4.70. This ... to exercising option after more than 4 years after retirement. Govt. may kindly consider whether this belated option and refund of gratuity is acceptable. If not, the refunded gratuity is to be returned to the pensioner.

In the light of the above facts govt. may pl. consider whether military/ war service of Shri RS Gurkha is to be counted towards civil pension. Incidentally it is brought to the notice of govt. that keeping open the option indefinitely would involve revision of cases long after retirement or even after death of the pensioner if the widow/ legal heirs opt to refund the gratuity received by the deceased pensioner. this may pl be considered and suitable instructions prescribing a time limit may pl be issued."

6. The aforesaid letter though it is mentioned to be under the signature of Accounts Officer, it seems to be signed by some subordinate staff, who has acted beyond the scope in which the case of the petitioner for revision of pension was considered by the higher authorities which is reflected from the earlier communications. The offending part of letter is that the letter mentions that,

"The counting of war/ military service under BCSR.245 A/247 towards civil pension is subject to the option exercised by the Govt. servant and the refund of the bonus or gratuity received for military service. Rule 247(3) of BCSR stipulates that the military bonus or gratuity is to be refunded in not more than 36 monthly instalments."

(At this juncture it may be noted that the entire amount was refunded by the petitioner in a single instalment as mentioned hereinabove). "This obviously implies that the pensioner should opt for retaining military bonus or gratuity or refund the same and counting of war/ military service towards civil pension as soon as he enters civil service or at any date before his retirement." The letter proceeds to mention that, "In the present case the govt. servant retired on 22.12.1965 and he has refunded the

gratuity amounting to Rs.64.50 on 14.4.70. This tentamounts to exercising option after more than 4 years after retirement. Govt. may kindly consider whether this belated option and refund of gratuity is acceptable. If not, the refunded gratuity is to be returned to the pensioner." In fact the writer of this letter is required to be called upon as to under what authority he has made these observations. The letter further proceeds to advise the Govt. to the effect that, "In the light of the above facts govt. may please consider whether military/ was service of Shri RS Gurkha is to be counted towards civil pension. Incidentally it is brought to the notice of govt. that keeping open the option indefinitely would involve revision of cases long after retirement or even after death of the pensioner if the widow/ legal heirs opt to refund the gratuity received by the deceased pensioner. this may pl be considered and suitable instructions prescribing a time limit may pl be issued."

7. The petitioner is left with no alternative but to go on making representations to the authorities. At the end of series of representations the petitioner is finally conveyed by the aforesaid impugned order dated 22.7.1974, Annexure 'Z' that his military/ was service cannot be accepted towards civil pension as the conditions stipulated in rule 246A and 247 of of BCSR are not applicable to the petitioner. That letter further proceeds to say that the amount refunded by the petitioner is to be returned to him. It is surprising that the office of the IG, Police has communicated to the petitioner on 17.1.1973 that the case of the petitioner has been revised by the AG, Ahmedabad and orders are being issued shortly, is nullified by the aforesaid order dated 22.4.1974, (Annexure 'X') and the final result is conveyed to the petitioner by the impugned order.

8. In the facts and circumstances of the case, the present petition is required to be allowed and the same is allowed. The order dated 22nd July1974 is hereby quashed and set aside. Respondents nos.1 and 5 are directed to consider the case of the petitioner for revision of pension, as communicated by the office of the IG, vide letter dt.17.1.1973, Annexure 'V' and for the payment along with reasonable interest. The respondents shall communicate this decision to the petitioner, latest by 31st July 2000 and in the event of the authorities coming to a positive conclusion, the payment of pension and gratuity along with arrears shall be made to the petitioner within a period of six weeks from the date of decision.

9. Looking to the peculiar facts of the case, it is directed that the respondents shall pay a sum of Rs.2,500.00 (Rupees two thousand and five hundred only) to the petitioner towards cost of this petition. The petition stands allowed. Rule is made absolute.

(Ravi R. Tripathi, J.)

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